

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3419 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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P S PARMAR

Versus

STATE OF GUJARAT

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Appearance:

PARTY-IN-PERSON for Petitioner

MR. C.C. Bhalja for Respondent No. 1

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 15/07/98

ORAL JUDGEMENT

The present petition has been filed by the petitioner for a direction to the respondents to promote the petitioner to the post of Joint Director of Agriculture with effect from the due date with consequential as well as retiral benefits.

2. The petitioner was working as District

Agriculture Officer in the cadre of Gujarat Agriculture Service class-I and his name finds place in the seniority list at serial no. 89 on 8.10.79, on 20.7.1982, but other junior officers namely C I Gandhi and C.S. Patel were promoted as Joint Directors under Agriculture and Forest Department by a notification dated 20th September, 1982. The petitioner feeling aggrieved by supersession filed Special Civil Application No. 374 of 1983. At the time of admission, learned counsel for the State made a statement and the Court passed the following order on 17.3.83.

"Mr. Shah states that the same procedure as laid down by the Government Resolution dated 23rd September, 1981 will be followed in the case of the petitioner. On this statement Mr. Joshipura withdraws the petition."

2. The State has filed two affidavits-in-reply. The first is dated 15.6.98 and the second is 10.7.1998. In the first affidavit-in-reply, it has been asserted that the petitioner was considered twice for promotion, but he was not found fit. First the DPC considered the promotion on 31.3.81. At that time, no inquiry was pending against the petitioner and he was not found fit for promotion. The respondent passed an order prematurely retiring by an order dated 25.6.82. The DPC was convened and it considered the promotion of the petitioner without referring the charge-sheet or without taking into consideration that some charge-sheet has been received against the petitioner and the petitioner was not found fit for promotion. The second charge-sheet was issued on 23.3.83, after the order passed by this Court on the writ petition no. 374 of 1983. Special Civil Application No. 374 of 1983 was filed for promotion that was withdrawn on the statement of the learned advocate for the State on 17.3.83. This petition came to be filed for the promotion to the post of Joint Director of Agriculture with consequential and retiral benefits.

3. Both the affidavits filed in reply to the petition say that the matter with regard to the promotion of the petitioner was considered twice and the petitioner was not found fit for promotion.

4. In the present case, the petitioner has appeared as party-in-person and has argued at length. He submitted that the promotions of the juniors have been made without preparing select list and without following the procedure established for promotion. He was

subjected to departmental proceedings in respect of which he was acquitted by the criminal Court and in respect of the 2nd charge, the inquiry was dropped on the ground that the petitioner was to retire. Hence, he is entitled for promotion to the higher post.

5. The learned AGP has submitted that the petitioner cannot claim promotion as a matter of right. Of course, he has a right only for consideration for promotion. In support of this, he has relied upon the case of the Supreme Court wherein it has been held that an employee has a right for consideration of his promotion, but he cannot claim promotion as of right. The right to be considered for promotion is different and distinct from the right to promotion. Even if this disciplinary proceedings are initiated against an employee and those proceedings are pending on the date on which the names of other employees are considered for promotion to the next higher post. If the delinquent employee is similarly situated as other employees and is also eligible has a right to be considered for promotion to the next higher post alongwith other employees. His name cannot be omitted from consideration merely because of pendency of departmental proceedings. An employee cannot be denied of right at interlocutory stage of departmental proceedings as he is still to be found guilty on the basis of the evidence. which might be produced against him during the proceedings. Till the charges are established, his right to be considered for promotion cannot be defeated. He is not under cloud and having been found guilty. Some suspicion is not a substitute for proof. Consideration for promotion alongwith other eligible candidates is done so as to be affecting the fundamental right available not to a delinquent employee under Articles 14 and 16 of the Constitution. Once again his name is considered in promotion and recommendations of the DPC are required to be kept in sealed covers for the reason that if the employee is ultimately found to be not guilty and charges set against him are not established he may be promoted immediately to the next higher post. In the present case, the statement made by the learned AGP that the procedure laid down by the Government Resolution dated 23rd September, 1981 will be followed.

6. According to the Resolution dated 23rd September, 1981, the procedure has been laid down that in case any employee is under suspension or disciplinary proceeding is pending against him, where a chargesheet and statement of imputations had been issued or a preliminary inquiry has been held and a decision has been taken by the

competent authority, to initiate disciplinary proceedings against him. Though charge-sheet and statements of allegations have not been issued, the delinquent employee will be considered at par with others for promotion.

In case he is found to be fit for promotion that decision will be kept in a sealed cover and on the termination of the disciplinary proceedings and he is not found guilty of charges levelled against him. The sealed cover will be opened and the person concerned will be given promotion with retrospective effect from the date on which the person concerned was entitled for promotion.

7. The petitioner was heard in person at length. He submitted that he was subjected to two departmental inquiries on different charges. One under Government Resolution, Agriculture and Forest Department Resolution no. VAR-1372/KH (266) K-1 dated 21st September, 1982 and other under Government Resolution no. Agriculture and Forest Department no. KHTS-1083/KH-286-K dated 24.3.83. The petitioner was given premature retirement by an order dated 25.6.82 with effect from 24.9.82. He filed Special Civil Application no. 3981 of 1982 for quashing premature retirement. This Court by an order dated 10.1.83 quashed the order of premature retirement and he joined his duties on 30.3.83. He also filed Special Civil Application No. 4591 of 1982 for implementation of the order dated 7.4.82 whereby the inquiry pending against the petitioner was directed to be concluded within four months. This court by its order dated 8.8.83 directed not to treat the inquiry as being held against the petitioner.

8. The learned counsel for the State submitted that he has filed two affidavits-in-reply wherein it is stated that the petitioner's name was considered twice by the DPC as no inquiry was pending against him and he was not found fit for promotion. On 31.3.81, the DPC considered the name of the petitioner but he was not found fit for promotion and at that time, no inquiry was pending against him and the Government Resolution dated 23rd September, 1981 was also not available at that time. The charge-sheet was issued to the petitioner on 21st September, 1982. On 5.10.82 DPC again considered the name of the petitioner for promotion without taking in account any charge-sheet pending against him. But the petitioner was not found fit for promotion on the basis of the confidential reports and his service record. In the Special Civil Application no. 374 of 1983, the statement was made by the learned Assistant Government Pleader that proceedings pending against the petitioner will be dealt with in accordance

with GR dated 23rd September, 1981. Though it appears that at that time, the learned counsel for the State was not aware that the petitioner was to be retired on 31.3.83. The procedure of sealed cover was to be adopted after the statement was made on 17.3.87. The petitioner retired on 31.3.83. After a short interval, disciplinary proceedings were dropped. As the meeting of DPC was not convened between 17.3.83 to 31.3.83, and proceedings were dropped and hence no question arises for applying the provisions of the GR dated 23rd September, 1981.

9. I have given conscious thought on the submissions made on behalf of the parties. The grievance of the petitioner that two departmental proceedings were pending against him by orders dated 21.9.1982 and 24.3.1983. Hence, his case for promotion was not considered by the respondents. In the affidavits-in-reply it is clearly asserted that the departmental proceedings pending against the petitioner were not in the way in any manner at the time when DPC considered the name of the petitioner for promotion. On the basis of the inquiry report and the service record of the petitioner, the petitioner was not found fit for promotion and the right of the petitioner has been properly attended by the respondents. So far as the order dated 17.3.83 in Special Civil Application No. 374 of 1983 is concerned, it appears that the learned Assistant Government Pleader was not aware of the retirement of the petitioner that he was to be retired from 31.3.83, after a short interval of few days. The resolution dated 23rd September, 1981 is not applicable in the present case as the petitioner was never found suitable for the promotion as his name has been considered twice ignoring the departmental proceedings at the relevant time. Hence, the decision of the DPC keeping the name of the petitioner in a sealed cover was not necessary as he was not found fit for promotion. After the statement on 17.3.83, no meeting was held between 17.3.83 to 31.3.83. Hence, the provisions of the GR dated 23rd September, 1981 are not attracted at all.

11. In view of the above discussion, I find no merit in this petition. Accordingly, the petition is dismissed. Rule is discharged with no order as to costs.

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